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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

In re J.R. et al., Persons Coming Under the Juvenile
Court Law.

C087872

SHASTA COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

C.R.,

Defendant and Appellant.

(Super. Ct. Nos.
16JVSQ3064101,
16JVSQ3064201,
16JVSQ3064301,
16JVSQ3064401)

C.R., mother of the minors J.R., T.S., Ti.S., and E.S., appeals from the juvenile court's order denying her petition for modification and terminating parental rights as to

J.R. (Welf. & Inst. Code, §§ 388, 366.26, 395.)¹ She contends the denial of her petition for modification was an abuse of discretion. We shall affirm.

BACKGROUND

In March 2016, mother was living with the minors J.R. (born December 2007), T.S. (born November 2009), Ti.S. (born August 2011), E.S. (born October 2012) (collectively, the minors), O.C. (born June 2004), and the father of the S. children, T.² At the end of the month, the Shasta County Health and Human Services Agency (the Agency) was informed by the Redding Police Department that, pursuant to an investigation of mother's residence for drug dealing, 100 (including 30 used) syringes, one gram of methamphetamine, an "8-ball" of heroin, cocaine, scales, and baggies were found at her home. Mother admitted using methamphetamine and smoking marijuana earlier that day, and showed track marks on her arms to the officers. The minors and O.C. were placed in protective custody on the following day. The S. father was incarcerated and the whereabouts of J.R.'s and O.C.'s fathers were unknown.

In April 2016, the Agency filed dependency petitions alleging jurisdiction over the minors and O.C. based on mother's substance abuse problem, the S. father's anger control and substance abuse problems, as well as his incarceration, the unavailability of the other fathers, and the parents' inability to meet their children's medical and dental needs. The minors and O.C. were detained later that month.

The May 2016 jurisdiction report stated mother admitted having a long history of drug abuse and had attended substance abuse treatment in the past. The S. father had a history of substance abuse and a criminal history of violent, drug-related, and child endangerment charges. Mother's criminal history included prior drug related charges.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² To avoid confusion, we refer to the father of T.S., Ti.S., and E.S. as the S. father.

O.C.'s father recently returned O.C. to mother from his care; he was unaware of mother's current substance abuse problems or the condition of her home.

The June 2016 disposition report recommended continuing the minors as dependents while giving custody of O.C. to her father and terminating the dependency as to her. The children were primarily raised by mother, except O.C., who had spent three years living with her father. T.S. struggled with adjusting to her foster home, threatening to run away several times. J.R. and T.S. had no formal educational experience before being placed in foster care.

A July 2016 addendum report related that J.R. reported being physically abused by his foster father earlier that month causing the children to be placed in new foster homes. The minors' behavioral problems lessened in their new placements.

In July 2017, the juvenile court terminated jurisdiction over O.C. and awarded custody to her father, sustained the petition as to the minors, and ordered reunification services for mother and the S. father.

The six-month review report stated that mother participated in drug treatment for four months before relapsing. The S. father perpetrated domestic violence on her during the time she relapsed. Mother obtained a temporary restraining order against him, but maintained telephone and physical contact with the S. father after the order. Mother was now living in a friend's apartment. Prior to the relapse, she was making good progress on her case plan.

J.R. and Ti.S. were placed together in a foster home, while T.S. and E.S. were placed separately in foster homes. T.S.'s placement, her fourth, was not a good fit for her and a search for a more appropriate placement was underway. J.R. and Ti.S. were in their third placement. They felt safe in it and would like to return to their home in the future. J.R. stated that he would like his parents to learn how to take him to school. E.S. was in his third placement; he attached to caregivers quickly and settled into his new foster home.

J.R. was diagnosed with posttraumatic stress disorder (PTSD) and adjustment disorder. T.S. was diagnosed with PTSD with depressive features. Ti.S. and E.S. had no diagnosed mental health needs. Services were continued at the six-month review hearing in January 2017.

The 12-month review report recommended continuing services for mother and terminating S. father's services. Mother had temporary housing through a friend and was being interviewed for a new housing development. She reported having a part-time job, and had reengaged in her recovery. Mother reported building a support network with others in recovery, and participating in Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) groups. She had no contact with the S. father, who was facing multiple charges with a possible 20-year term.

J.R. and Ti.S. moved to their fourth placement after they were asked to leave their previous placement due to behavioral challenges. They appeared to be regressing both socially and emotionally. Ti.S. was now diagnosed with adjustment disorder and attention deficit disorder. T.S. was now in a group home after she engaged in numerous dangerous behaviors that put she and her foster family at risk. T.S. physically assaulted the foster parents, threatened to harm the foster siblings, and would lay down in traffic during times of conflict. T.S. appeared to be doing well at the group home. E.S. had not changed his placement.

The minors had regular contact with each other, as well as regular visitation with mother. Mother was asked to leave a visit in January 2017 due to her inability to manage the minors' behavior and her unwillingness to take guidance from staff. Mother went to visiting coaching where she reported that the minors could tell when she was under the influence and would misbehave. Her ability to manage the minors at visits and take guidance from staff improved when she was testing negative for drugs.

The juvenile court terminated services for the S. father and continued mother's services at the 12-month review hearing in June 2017.

The Agency recommended terminating services for mother in a September 2017 18-month review report.

Mother claimed to have no other housing options. A social worker gave her a new referral to a housing program; an apartment was available for her, but she waited four weeks before submitting the paperwork, causing the apartment to become unavailable. Mother reported she was staying with a friend and the friend's children, but she did not provide an address.

Mother had a job packing boxes, but could devote little time to it given her obligations with the Agency and the probation department. She had been arrested twice for selling illegal substances since the last report. Both arrests occurred at her current residence. Mother was part of a group of six people involved in the sale of narcotics; she incriminated herself through texts. A total of 3,343.63 grams of heroin with an estimated street value of \$330,000 were seized from the group. Multiple service providers and Agency personnel reported concerns about mother's sobriety during the reporting period. Mother, who had stopped testing positive for controlled substances in April 2017, began testing positive for them starting in June 2017. Throughout the life of the case, she had stayed free of controlled substances for no more than three months at a time.

J.R. adjusted well to his new foster home, his fifth placement, following violent tantrums at his prior placement. T.S. was doing well in the group home with decreased violent outbursts and AWOL attempts. Staff reported tremendous improvement in her behavior and self-esteem, which they attributed to the consistency of being in a group home placement. Her challenging behaviors increased after one of her brothers told her mother was using drugs again. Ti.S. engaged in challenging behaviors following placement in his new foster home. The challenging behavior began to increase in July 2017. E.S. continued in his third placement, where his behavior waxed and waned. He had a violent tantrum at school causing him to be removed and isolated on the outdoor patio.

The minors enjoyed visits with mother. At times, she showed an ability to set boundaries and limits for them. In other instances, she struggled to do so, and more often than not, had to be prompted to give direction to the children. The minors' behavior escalated since mother's June 2017 relapse; T.S. even began to engage in self-harm following visits. As a result, the Agency reduced visits to one hour per week. The minors' clinicians stated that mother has not addressed her own trauma and was unable to meet the minors' emotional needs. As an example, when E.S. and Ti.S. would start to cry for their father during tantrums, mother would start crying as well.

Mother's services were terminated at the 18-month review hearing in September 2017.

A February 2018 section 366.26 report recommended continuing T.S., Ti.S., and E.S. in foster care with a permanent plan of adoption. The Agency also recommended a 90-day continuance for J.R., who was doing well in a potential permanent placement. Mother visited the minors one hour per month. She was still unable to set boundaries and limits for them on a consistent basis. The minors would react to mother's emotional state, and their behavior would change and escalate during and after visits.

T.S., Ti.S., and E.S. were not in adoptive homes. T.S. was improving and ready to transition to a lower level of care. She was in her sixth placement. Ti.S. was in his fifth placement and E.S. remained in his third. The Agency recommended a 180-day continuation to find an adoptive family for each of them. The section 366.26 hearing was continued in April 2018.

In May 2018, the Agency reported that proposed adoptive parents were found for J.R., who he had been placed with since June 2017. J.R. and the proposed adoptive parents were very bonded to each other.

In May 2018, mother filed petitions for modification (§ 388) requesting the juvenile court modify its order by returning the minors to her care with family maintenance. As changed circumstances, mother alleged her graduation from the Visions

of the Cross program in March 2018, her transition to sober living housing, her completion of parenting classes in January 2018, and her continued visits with the minors. Attached to the petitions were various supporting documents showing, among other things, various completed classes and negative drug tests.

The Agency filed a report responding to the petition in July 2018. Mother resided in sober living at Visions of the Cross and participated in outpatient treatment. She attended multiple AA/NA meetings every week and had a sponsor. Mother was in compliance with her probation requirements. Visions of the Cross did not allow all four children to reside on their campus with mother, so mother was using another program to find housing.

Visits had improved over the year with the minors' negative attention-seeking behaviors decreasing. Mother was still unable to meet the minors' needs; she was unable to control what went on during visits. The minors fought for mother's attention during the majority of visits since September 2017. Mother did not address escalated emotions and behavior challenges before safety concerns arose.

J.R. referred to his proposed adoptive parents as mom and dad. He created a Mother's Day book for his foster mother and made a Father's Day card for his foster father thanking him for "taking him in." When informed that visits with mother were still once a month, he replied, "Ok, mom visits are hard."

T.S. was now in a foster home and the caregiver expressed an interest in adopting her. Although some negative behaviors were expected of her as she transitions from the group home, they were far less than expected. Her therapeutic team described her as being in a hypervigilant state, with the trauma she experienced as a child impacting her social and emotional development. Ti.S. loved his mother and wanted to be adopted. When told he would not be returning to his mother's care, he wept and said, "She said she stopped putting that bad stuff in her body." Asked why he thought he was in foster care, Ti.S. said, "drugs put holes in your brain," further explaining that drugs made it

hard to make good choices. His challenging behavior decreased when visits with mother decreased and he was provided more information about the case.

E.S. was accustomed to living in the care of someone other than his mother. He frequently asked the social worker when he would be moving to an adoptive home. He does not frequently talk about his mother, or ask for more visits.

The Agency recommended denying the petition as returning the minors to mother's care posed too great a risk to their emotional well-being.

An August 2018 report related that both J.R. and T.S. was in a foster home willing to provide permanency, Ti.S. was in a foster home, and E.S. was being transitioned to a foster home willing to provide permanency.

At the hearing on the petition, mother testified that she had been clean since December 2017. She was tired of living a life of addiction. She made money selling drugs before her arrest, but now worked as a phone representative and did not want to go back to selling drugs. Mother attended church and had a good support system. She no longer depended on drugs to wake her up or put her to sleep.

Mother attended NA meetings four times a week. She no longer associated with the people she had before her arrest. Three of her children could live with her at Visions of the Cross. She could get housing for all of her children through a housing assistance program, but currently lacked the funds to do so. She had no contact with the S. father and had completed her entire case plan.

The maternal grandmother testified that mother was a good person who got involved with the wrong person. The children loved their mother.

Fourteen-year-old O.C. testified that mother was there more for them now than when the children were first placed in foster care. Mother was now getting her to school early, and encouraging O.C. to get on the honor roll. According to O.C., mother had changed a lot.

A social worker testified that it was too great a risk to return the minors to mother's care. The Agency twice attempted to send children to her home in her care, once T.S. and once J.R., with mother relapsing both times. The Agency had been intending to return J.R. to mother's care when she was arrested for selling drugs. Mother's inability to curb the behaviors of T.S., Ti.S., and J.R. would take another six months to a year of additional services in order for a safe and comfortable return of the minors.

The juvenile court found that while mother made substantial progress, the risk of returning the minors to her care was too great to justify granting the petition given the consequences of a relapse. Noting there were reasons the Legislature put a timetable for these types of cases, and that the minors' questions about their fates showed the need for stability, the juvenile court denied the petition. The juvenile court also found J.R. was adoptable and terminated parental rights as to him with a permanent plan of adoption.

DISCUSSION

Mother contends it was an abuse of discretion for the juvenile court to deny her petition for modification.

Section 388 permits modification of a dependency order if the moving party demonstrates a change of circumstance or new evidence and if the proposed modification is in the best interests of the minor. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526.) The party petitioning for modification has the burden of proof by a preponderance of the evidence. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 48.) The best interests of the child are of paramount consideration when a petition for modification is brought after termination of reunification services. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) In assessing the best interests of the child, the juvenile court looks to the needs of the child for permanence and stability. (*Ibid.*) A modification petition "is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the

absence of a clear abuse of discretion. [Citations.]” (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.)

Mother argues the court’s concern about her relapsing in the future was based on speculation, not substantial evidence. She asserts the statutory timeframe in dependency cases was not a valid concern for the juvenile court as section 388 is intended as an escape mechanism allowing a juvenile court to consider information after the time for reunification has ended. Mother also relies on the minors’ strong bond with her and each other. Finding the juvenile court based its decision on speculation and flawed reasoning, she concludes the order denying her petition was an abuse of discretion.

This case shows mother’s significant history of drug abuse, which had a strongly negative impact on the minors’ well-being. Most of the minors have significant emotional problems, and the issues for the minor with the most severe problems, T.S., are at least, in part, traceable to the traumas she experienced in mother’s household. Mother’s issue with drugs harmed the minors during this dependency, as their misbehaviors escalated when she visited them while under the influence. Nor is it speculation for the juvenile court to consider the chance of mother’s relapse to be an appreciable risk. Given mother’s repeated relapses and significant periods of drug use during this lengthy dependency, it is not speculation, but a reasonable assessment of probability, to find a real risk of relapsing. Given the profound danger to the minors posed by mother’s drug use, the gravity of this risk is sufficient to justify denying the petition.

Other reasons also support the juvenile court’s ruling. Throughout the dependency, mother has shown herself as unable to manage the minors during visits. While these problems were much more pronounced when she was using drugs, the last report, issued after her sobriety started, noted that she still was unable to consistently manage the minors during visits.

Mother's petition also fails because she was not yet able to secure housing for all of the minors. While she sought return of all four minors to her home, her current living quarters, obtained through her treatment program, could accommodate only three children and mother. Mother attempts to thread this needle on appeal by not contesting the termination of parental rights as to J.R., challenging the denial of the section 388 petition as it relates only to T.S., Ti.S., and E.S. Mother did not raise this variant on her petitions to the juvenile court, forfeiting the claim here. Even if we were to consider it, this argument does not change the fact that finding adequate housing, an issue for mother throughout the dependency, had not yet been accomplished by mother 24 months into the dependency.

Mother, while admirably sober for the last eight months, has a history of severe substance abuse and relapse, which presents a substantial danger to the minors if they were returned to her care. She has not demonstrated a consistent ability to manage them, even in the relatively controlled conditions of a monitored visit. She does not have housing for all four of the minors, whom she sought to reunify under the petition. It was not an abuse of discretion to deny the petition under these circumstances.

DISPOSITION

The orders denying the section 388 petitions and terminating parental rights as to J.R. are affirmed.

/s/
Blease, J.

We concur:

/s/
Raye, P. J.

/s/
Butz, J.